STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

International Brotherhood of Teamsters, Local 700,	)	
Charging Party,	)	
and	)	Case No. L-CA-14-016
Illinois Fraternal Order of Police Labor Council,	)	
Intervening Charging Party,	)	
and	)	
County of Cook and Sheriff of Cook County,	)	
Respondents.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On March 9, 2015, Administrative Law Judge Deena Sanceda issued a Recommended Decision and Order in the above-captioned case finding that Respondents had violated Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), as amended, when they unilaterally changed their secondary employment policy. Thereafter, in accordance with Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1300, Charging Party and Intervening Charging Party filed timely exceptions to the Recommended Decision and Order, followed by Respondents' timely responses. After reviewing the record, exceptions and responses, we hereby uphold the Recommended Decision and Order for the reasons set forth by the Administrative Law Judge.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Richard A. Lewis
Richard A. Lewis, Member

Decision made at the Local Panel's public meeting in Chicago on July 7, 2015, written decision issued in Chicago, Illinois on September 29, 2015.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

International Brotherhood of Teamsters, Local 700, Charging Party and County of Cook and Sheriff of Cook County, Respondents	)	Case No. L-CA-14-016

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 14, 2013, International Brotherhood of Teamsters, Local 700 ("Union" or "Charging Party"), filed an unfair labor charge with the Local Panel of of the Illinois Labor Relations Board ("Board") in the above-captioned case, alleging that, County of Cook and Sheriff of Cook County ("County" or "Respondents"), violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act ("Act"), 5 ILCS 315 (2012), as amended. The charges were investigaged in accordance with Section 11 of the Act, and on February 6, 2014, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted in Chicago, Illinois, on June 4, June 5, and July 22, 2014, before the undersigned, at which time the Charging Party presented evidence in support of its allegations and both parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally, and file written briefs. After full consideration of the parties' stipulations, motions, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find that:

1. At all times material, Respondents have been employers within the meaning of Section 3(o) of the Act.
2. At all times material, Respondents have been subject to the jurisdiction of the Local Panel of the Board, pursuant to Section 5 of the Act.
3. At all times material, Respondents have been subject to the Act, pursuant to Section 20(b) thereof.

4. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

5. At all times material, the Charging Party has been the exclusive representative of three units (Units) comprised of all full-time employees jointly employed by the Respondents in the classifications of Deputy Sheriff (Unit 1), Correctional Officer (Unit 2) and Fugitive Officer (Unit 3).

6. On or about August 2, 2013, the Respondents enacted General Order 11.4.55.1, regarding secondary employment for, *inter alia*, the employees in the Units.

II. INVESTIGATORY FACTS

On December 4, 2007, the Sheriff's Office issued Cook County Sheriff's Order General Order ("CCSO GO") 07-2 which established the policy and procedures related to secondary employment by all Sheriff's Office sworn and civilian employees. This General Order became effective on December 9, 2007. The most recent CBA for the Deputy Sheriffs, Unit 1, spanned from December 1, 2010 through November 30, 2012, but did not become effective until May 8, 2013. The most recent CBA for the Corrections Officers, Unit 2 spanned from December 1, 2008 through November 30, 2012, and was effective on May 8, 2013. The most recent CBA for the Fugitive Officers, Unit 3, spanned from December 1, 2008 through November 30, 2012, and was approved by the Cook County Board of Commissioners on July 17, 2013. Each CBA includes a provision for Secondary Employment which states that each employee will operate within the department's secondary employment policy's guidelines.

On July 8, 2013, the Sheriff's Office issued CCSO GO 11.4.55.0 which rescinded CCSO GO 07-2 and established a new secondary employment policy and procedures for CCSO employees. The General Order identified that it would become effective on August 1, 2013. On July 10, 2013, the County provided the Union a copy of CCSO GO 11.4.55.0. By letter dated July 12, 2013, Union attorney Cass Casper informed County attorney Peter Kramer that the Union viewed that the General Order involved a mandatory subject of bargaining and that any attempt to implement the order would be viewed as an unlawful unilateral change. Accordingly, Casper demanded to bargain over the General Order and its impact. The letter stated "Should I not hear from you by July 19, 2013, I shall presume that you have no intent to negotiate this matter." At no time did Kramer respond to Casper or any other Union representative regarding the demand to bargain.

On July 23, 2013, the Sheriff's Office issued CCSO GO 11.4.55.1 in which it rescinded CCSO GO 11.4.55.0 and CCSO GO 07-2, and again established a new secondary employment policy and procedures for CCSO employees. This General Order identified that it would become effective on August 1, 2013. On August 2, 2013, Casper informed Kramer that on August 1, 2013, the Unions became aware of CCSO GO 11.4.55.1. Casper further informed Kramer that it was the Union's position that the new General Order also involved a mandatory subject of bargaining and constituted a unilateral change to existing terms and conditions of employment. Casper requested that Kramer "consider this a demand to bargain over the new GO 11.4.55.1" and that Kramer should contact him to schedule bargaining dates. On September 9, 2013 Casper again contacted Kramer demanding to bargain over CCSO GO 11.4.55.1 and its effects. At no time did Kramer respond to Casper or any other Union representative regarding these demands to bargain over CCSO GO 11.4.55.1.

The parties began negotiating a Unit 2 successor CBA in 2011, and continue to negotiate the terms of the successor agreement. At some point during these negotiations the Union proposed that any reference to a General Order be removed from the secondary employment provision of the existing CBA, and that the secondary employment policy stem solely from the text of the successor CBA. It is unclear whether the parties met during July 2013. However, it is clear that prior to August 2013 neither party specifically addressed the contents of any General Order applicable to secondary employment. Negotiations for a Unit 1 successor CBA are ongoing, but the issue of secondary employment was agreed upon in January 2013, prior to the issuance of CCSO GOs 11.4.55.0 and 11.4.55.1. The parties have not begun to negotiate a Unit 3 successor CBA.

The relevant provisions of the Secondary Employment Policies are as follows:[1]

Contents of CCSO GO 07-2

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II. POLICY

The Cook County Sheriff's Office shall require all sworn and civilian employees to confirm their secondary employment status on an annual basis. [...] This procedure is essential to the integrity and operational efficiency of the Sheriff's

[1] I find relevant to this case the provisions to which Charging Party objects alleging the changes require bargaining and other provisions that I have found necessary to provide context to Charging Party's allegations. I make no findings regarding the provisions Charging Party does not allege constitute changes to the previous secondary employment policy.

Office, and for the protection of its employees, the community and the organization, itself. [...]

III. ENCLOSURE

A. Secondary Employment Request form (FCN-3)(Dec. 07)

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V. RESPONSIBILITY

The duties and obligations of employees to the Cook County Sheriff's Office (CCSO) take priority over any other employment. Employees engaging in secondary employment are reminded that their primary responsibility is to the CCSO. All employees are subject to recall at any time under emergency conditions; secondary employment will not infringe upon this obligation.

VI. PROCEDURE

The Sheriff's Office will require all employees to complete a Secondary Employment Form no later than December 31 of each year. All approval of secondary employment will expire at 2400 hours on 31 January of each year. CCSO employees desiring to continue their ongoing secondary employment in the following calendar year will resubmit their request for approval in December of the current calendar year.

A. Prior to accepting or commencing any secondary employment, permission must be obtained through the chain of command from the Department Head. Applicants must complete a Secondary Employment Request form and submit the completed document to their immediate supervisor at least fourteen (14) days prior to the effective date of employment [...] In emergencies, each Department may approve secondary employment requests submitted less than fourteen (14) days prior to the effective date of the employment.

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C. As a condition of receiving approval of a Secondary Employment Request Form, the applicant employee will authorize the release of all employment information to the CCSO upon request of the Sheriff, Office of Professional Review, appropriate Department Head or Director of Personnel.

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E. All approved secondary employment will be subject to continual and regular review by supervision. Reviews will be submitted through the chain of command and documented in an appropriate manner by the employee's Department Head. The review will include consideration of the following factors to determine revocation of secondary employment.

1. Any restrictions or limitations established by this order, the applicant's departmental General Orders or applicable collective bargaining agreement.

2. Any disciplinary history, or attendance of the requesting employee relevant to secondary employment including but not limited to revocation of law enforcement powers (if secondary employment is security related). In addition, the affected Department Head shall ensure that a review will be completed upon the occurrence of relevant disciplinary action or attendance deficiency and upon any change in the employee's employment status relevant to discipline (i.e. de-deputized, etc.).
3. Employment status changes, including injury on duty, duty accommodations / restrictions, ordinary disability, medical leave, Family and Medical Leave of Absence act (FMLA), etc.

F. The employee's Department Head shall ensure that a review will be completed upon the occurrence of any change in employment status (i.e. injury on duty, ordinary disability, duty restriction/accommodation, medical leave, FMLA, etc.). Supervisors are required to request suspension of the approved Secondary Employment Request Form for all medical leaves through the chain of command. Reinstatement of the Secondary Request will be considered upon expiration of all medical leaves.

G. If the secondary employment interferes with the employee's ability to perform his/her duties within the CCSO or impairs his/her job performance in any manner, supervisors are required to request revocation of the approved Secondary Employment Request Form through the chain of command.

H. If the employee fails to comply with any of the conditions or regulations set forth herein, permission to engage in secondary employment may be revoked.

I. Department heads will immediately advise affected employee of any revocation of secondary employment approval in writing.

J. Department Heads will notify the affected employee, in writing, of approval of secondary employment.

VII. RESTRICTIONS AND LIMITATIONS ON SECONDARY EMPLOYMENT

Secondary Employment is prohibited under the following conditions unless expressly authorized in writing by the appropriate Department Head or designee.

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B. When the employee is a probationary employee, except for the following promotions within the departments (i.e. Officer to Sergeant, Sergeant to Lieutenant, etc).

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G. When secondary employment working conditions (including hours of work or location) would tend to impair the employee's

efficiency, capabilities as an employee or interfere with the employee's ability to respond to emergency calls.

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VIII. RESPONSIBILITY TO THE DEPARTMENT

CCSO Employees engaged in approved secondary employment must ensure that the following regulations are strictly complied with:

A. All CCSO employees engaging in secondary employment of any type shall recognize their primary responsibility to the Sheriff's Office and realize that they are subject to call at any time for emergencies, special assignments or overtime duty; and that their secondary employment cannot infringe upon this primary obligation.

B. CCSO employees shall ensure that the Secondary Employment Request form is accurate and current at all times. Any cancellation in secondary employment will require that the employee notify the appropriate Department head via written report through the chain of command of such cancellation. Changes in secondary employment will require that the employee submit a new Secondary Employment Request Form following the procedures set forth in this order.

C. If the secondary employment involves a labor controversy of any nature, the CCSO employee must immediately notify the appropriate Department Head through the chain of command of the nature of such controversy.

IX. GENERAL

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B. The CCSO will not be liable for the actions or omissions of an employee during actual work hours in secondary employment.

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X. DISCIPLINARY ACTION

Disciplinary procedures will be initiated, in accordance with applicable General orders and/or collective bargaining agreements, for any CCSO employee found to be in violation of this order.

XI. APPLICABILITY

This order is applicable to all CCSO employees and is for strict compliance.

Application of CCSO GO 07-2

Under CCSO GO 07-2, attendance issues such as tardiness or unauthorized absences were grounds for revocation of secondary employment when such infractions were causally connected to the employee's second job. The record also contains information regarding the

discipline imposed upon an employee for violating the Sheriff's secondary employment policy as identified in CCSO GO 07-2. Based on that information, under CCSO GO 07-2, an employee was required to submit a Secondary Employment Request when seeking secondary employment and authorization for secondary employment was annually reviewed thereafter. The request was then reviewed by the employee's Supervisor, Watch Commander, Unit Commander, Division Chief, First Deputy, and Department Head, where each individual could recommend to the Chief Deputy Sheriff whether to approve or deny the secondary employment request, but the ultimate decision was made by the Chief Deputy Sheriff. In order to aid the Chief Deputy Sheriff in this decision, he was provided with these recommendations and any information regarding the employee's attendance and medical time that was deemed relevant by the recommending officers. The Chief Deputy Sheriff did not always agree with the recommendations as presented, and often did not provide a reason for his approval or denial of the continued secondary employment request. The requesting employee was then notified of the decision via memo, and the memo was also distributed to the Personnel Director and the employee's Unit Commander.

Kramer also testified to the County's general inability to confirm an employee's secondary employment status. Specifically, Kramer testified that under CCSO GO 07-2, if the County discovered that an employee was working secondary employment and his file does not indicate approval of secondary employment, if the employee alleged that he submitted the request to his superior an internal investigation of the whereabouts of such a request were conducted. According to Kramer, whether an employee had been working secondary employment without explicit authorization would not be addressed without first determining if the employee even requested such authorization.

Contents of CCSO GOs 11.4.55.0 and 11.4.55.1

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II. POLICY

A. Secondary Employment affects the integrity and operational efficiency of the CCSO; therefore it must be regulated. The result will benefit the CCSO, its employees, and the community. [...]

B. All CCSO employees, both sworn and civilian, shall complete a Secondary Employment Disclosure Form on an annual basis pursuant to this Order.

C. Approved Secondary Employment will be valid from January 1st through December 31st. This order shall not interfere with an employees approved Secondary Employment for the calendar year 2013 governed by Sheriff's Order 07-2, however, the employee shall

submit a Secondary Employment Disclosure Form request for the calendar year 2014 by October 1, 2013 in accordance with this Order.

III. APPLICABILITY

This order is applicable to all CCSO employees and is for strict compliance.

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V. ENCLOSURES

A. Secondary Employment Disclosure Form (FCN-02)(JAN 13)

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C. Secondary Employment Revocation Form (FCN-05)(JAN 13)

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VII. RESTRICTIONS AND LIMITATIONS OF SECONDARY EMPLOYMENT

Working Secondary Employment is prohibited under the following conditions:

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B. When the employee is a probationary employee, except following promotions within Departments (e.g. Officer to Sergeant, Sergeant to Lieutenant, etc.).

***

G. When Secondary Employment working conditions, including hours of work or location would impair the employee's efficiency and capabilities as an employee of the CCSO or interfere with the employee's ability to respond to emergency calls for the CCSO.

H. When an employee has incurred Unauthorized Absences or has been on Proof Status for attendance related issues within the previous twelve (12) months from October 1st of the current year for annual requests or from the date of application for new requests.[2]

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J. When the employee is engaged in a security related Secondary Employment capacity at the site of a labor dispute, Secondary Employment shall be prohibited for the duration of the labor dispute. The employee shall immediately notify his/her Department Head/designee, through the chain of command, or the labor dispute. Failure to do so shall result in the revocation of Secondary

[2] CCSO GO 11.4.55.0 identifies Section VII(H) as: "When an employee has incurred Unauthorized Absences or has been on Proof Status for attendance related issues within the previous twelve (12) months from September 1st of the current year for annual requests or from the date of application for new requests." The only discernible distinctions between General Order 11.4.55.0 and General Order 11.4.55.1 are the date identified in Section VII(H) and the issuance date of the respective orders.

Employment and subject the employee to disciplinary action and immediate referral to the Office of Professional Review (OPR).

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L. If an employee is on an approved Leave of Absence (e.g. Ordinary Disability, Injured on Duty (Duty Disability), Maternity/Paternity Leave, FMLA Leave, Military Leave, Leave of Absence, etc), the affected employee may continue to work Secondary Employment provided:
   1. The Secondary Employment is not security/traffic related (not applicable for an approved Leave of Absence to go to another law enforcement agency or military leave);
   2. The Secondary Employment job responsibilities differ from the employee's job responsibilities at the CCSO for which the employee is unable to perform pursuant to the approved Leave of Absence (applicable to medical related leaves);
   3. The Secondary Employer is not a public body supported in whole or part by taxation.

M. If the employee on approved Leave of Absence fails to meet the criteria in Section VII above, he/she shall not work Secondary Employment while on the approved Leave of Absence.

VIII. EMPLOYEE RESPONSIBILITIES

A. All CCSO Employees must complete and submit a Secondary Employment Disclosure Form, through his/her chain of command, indicating whether or not he/she works Secondary Employment on an annual basis pursuant to this Order beginning October 1, 2013 and each October 1st thereafter. The deadline for submittal of all Secondary Employment Disclosure Forms is October 1st.

B. Duties and Obligations - The duties and obligations of employees to the CCSO take priority over any other employment. Employees engaging in Secondary Employment are reminded that their primary responsibility is to the CCSO. All employees are subject to recall at any time under emergency conditions; Secondary Employment shall not infringe upon this obligation.

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IX. DEPARTMENT RESPONSIBILITIES

A. The requesting employee's immediate supervisor shall review the Secondary Employment Disclosure Form and forward the same with attached documentation to the appropriate Department Head through the chain of command. The Department head/designee shall review the form and all attached documentation to determine a final decision. The Department Head/designee reviewing Secondary Employment Disclosure Forms shall consider any restrictions or

limitations established by this Order, the employees Department General Orders or applicable Collective Bargaining Agreement.

B. Annual Requests – Annual requests are due on or before October 1st of the current year. The Department Head/designee shall have sixty (60) days to review, conduct due diligence, approve/deny requests and scan and forward completed Secondary Employment Disclosure Forms via email to the Sheriff's Personnel Office prior to December 1st. The Sheriff's Personnel Office shall then have thirty (30) days to account for all forms and update the Second Employment Database prior to December 31st.

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X. DENIAL/REVOCATION OF SECONDARY EMPLOYMENT

A. Secondary Employment may be denied or revoked when an employee:

1. Is currently De-Deputized;
2. Is currently in an Unauthorized – No Pay status;
3. Has incurred one (1) or more instances of an unauthorized absence in the previous twelve (12) months from October 1st of the current year for annual requests or from the date of application for new requests;
4. Has incurred four (4) or more instances of documented tardiness for duty in the previous twelve (12) months from October 1st of the current years for annual requests or from the date of applications for new requests. For purposes of this Order, an instance of documented tardiness is defined as when an employee timecard has been recorded "Tardy."
5. Has been on Proof Status within the previous twelve (12) months from October 1st of the current year for annual requests or from the date of application for new requests;
6. Has received discipline from his/her original Department or from OPR [Office of Professional Responsibility] resulting in a suspension of a total of three (3) or more days for a single infraction that occurred within the previous twelve (12) months from October 1st or the current year for annual requests or from the date of application for new requests;

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12. Fails to comply with any of the conditions or regulations set in this Order.
13. Any other infraction the Department Head/designee deems detrimental to the CCSO.

B. If a supervisory staff member becomes aware of any infraction listed in Section X.A. the supervisor may initiate the Secondary Employment Revocation Form through his/her chain of command.

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C. If the CCSO is made aware that an employee continues to work Secondary Employment following notification of denial or revocation of Secondary Employment, an immediate referral shall be made to OPR and the employee shall be subject to disciplinary action, up to and including termination.

XI. SECONDARY EMPLOYMENT REPOSITORY

A. The Sheriff's Personnel Office shall be the central repository for all scanned Secondary Employment Disclosure Forms and any applicable corresponding Secondary Employment documentation ... received from all CCSO departments.

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C. The Sheriff's Personnel shall track and maintain all Secondary Employment, including approvals, denials, revocations and disclosures of no Secondary Employment, within the Secondary Employment Database.

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E. In the event an employee is found not to have submitted a Secondary Employment Disclosure Form, the Director of Personnel/designee shall notify the employee and his/her Department Head/designee and require the employee to complete and return the Secondary Employment Disclosure Form to the Sheriff's Personnel Office. If, after two (2) notifications, the employee fails to submit a completed Secondary Employment Disclosure Form, the Sheriff's Personnel Office will open a Complaint Register with OPR.

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III. ISSUES AND CONTENTIONS

The Charging Party alleges that the County violated Sections 10(a)(4) and (1) of the Act when it failed and refused to bargain over the unilateral changes to the secondary employment policy. Specifically, the Union contends that the changes to the secondary employment policy involve mandatory subjects of bargaining; thus the parties are required to bargain over such changes prior to implementation. The Union further contends that certain provisions of the new General Order that was implemented on August 1, 2013, constitute material changes to the County's secondary employment policy such that it altered the parties' status quo. Finally, the Union contends that the County failed and refused to bargain over the new General Order when it implemented the General Order without responding to the Union's written requests to bargain.

The Respondents assert that they did not violate Sections 10(a)(4) and (1) of the Act when they issued and implemented CCSO GO 11.4.55.1 regarding the secondary employment policy. Specifically, the County argues that the issue of secondary employment is not a mandatory subject of bargaining because it is within the County's inherent managerial authority to issue and implement a secondary employment policy without bargaining with the Union, and because the burdens that bargaining would impose on the County's authority outweigh the Union's interest in bargaining. The County further contends that CCSO GO 11.4.55.1 is not a new policy and did not otherwise change the status quo. Finally, the County argues that its actions do not constitute a refusal to bargain because it has not explicitly refused to bargain over the General Order and the Union has not addressed the General Order at the negotiating table.

IV. DISCUSSION AND ANALYSIS

The issue in this case concerns whether the County violated Section 10(a)(4) and (1) of the Act by failing to bargain in good faith with the Union when it issued and implemented CCSO GO 11.4.55.1. Section 10(a)(4) of the Act states, in relevant part, that it is an unfair labor practice for a public employer or its agent to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit. Section 10(a)(1) provides, in relevant part, that it is an unfair labor practice for a public employer or its agents "to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization[...]" The duty to bargain collectively is defined, in relevant part, by Section 7 of the Act as:

> the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Section 7 of the Act requires parties to bargain with respect to employees' wages, hours and other conditions of employment i.e. "mandatory" subjects of bargaining. Forest Pres. Dist. of

Cook Cnty. v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733, 754 (1st Dist. 2006); Vill. of Westchester, 16 PERI ¶2034 (IL SLRB 2000); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987).

An employer violates its duty to bargain in good faith when it unilaterally changes the status quo involving a mandatory subject of bargaining as identified in Section 10(a)(4) and (1) of the Act when it either implements a change without bargaining with the exclusive representative, or it bargains with the exclusive representative but then implements a change without such bargaining resulting in either an agreement or in an impasse. Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill. Div. 1, 284 Ill. App. 3d 145, 153 (1st Dist 1996); Cnty. of Cook (Dep't of Cent. Serv.), 15 PERI ¶ 3008 (IL LLRB 1999) (citing Litton Syst., 300 NLRB No. 37 (1990)); Cnty. of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994); Cnty. of Jackson, 9 PERI ¶ 2040 (IL SLRB 1998).

Here, the Union alleges that the County implemented the new secondary employment policy without bargaining over the policy. It is well settled that when no bargaining occurred an employer violates its obligation to bargain in good faith when it unilaterally changes the status quo involving a mandatory subject of bargaining without providing the union notice and an opportunity to bargain. Chicago Park Dist. v. Ill. Labor Rel. Bd., 354 Ill. App. 3d 595, 609 (1st Dist. 2004); Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill. Div. 1, 284 Ill. App. 3d at 153; Cnty of Cook (Cook Cnty. Hosp.), 2 PERI ¶ 3001 (IL LLRB 1985) (citing Arnold Graphics v. NLRB, 505 F.2d 257 (6th Cir. 1974)). Accordingly, the issues to be resolved are as follows: (1) whether CCSO GO 11.4.55.1 contains changes to the secondary employment policy that concern mandatory subjects of bargaining; (2) whether when it implemented CCSO GO 11.4.55.1, the County instituted material changes to its secondary employment policy such that it altered the status quo; and (3) whether the County gave the Union notice and an opportunity to bargain over any changes to the secondary employment policy.

A. Mandatory subject

The issue of whether the secondary employment policy as identified in CCSO GO 11.4.55.1 is a mandatory bargaining subject, shall be examined pursuant to the framework that the Illinois Supreme Court established in Central City Educ. Assoc. v. Ill. Ed. Labor Rel. Bd., 149 Ill. 2d 496, 522 (1992) (analyzing the mandatory subject provision of the Illinois Educational Labor Relations Act (IELRA) and later applied that analysis directly to this Act in City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d 191, 206-207 (1998)). The Central City

test first considers whether a topic concerns the wages, hours, and terms and conditions of employment of employees in the bargaining unit. Cnty. of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011) (citing Central City Educ. Assoc. v. Ill. Ed. Labor Rel. Bd., 149 Ill. 2d at 523). If it does, the second prong of the Central City test asks whether the topic is also a matter of inherent managerial authority. Cnty. of Lake, 28 PERI ¶ 67. Finally, if the topic both concerns the wages, hours, and terms and conditions of employment of the employees in the bargaining unit and is a matter of inherent managerial authority, the third step of the Central City test requires weighing the benefits that bargaining will have on the decision making process against the burdens that bargaining imposes on the employer's authority. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2009). If the benefits outweigh the imposition on the employer's authority, then the matter is subject to mandatory bargaining. Id. For the reasons stated below, I find that the County's changes to its secondary employment policy as identified in CCSO GO 11.4.55.1 are mandatory bargaining subjects.

1. topic concerning wages, hours, and terms and conditions of employment

The Union alleges that the County changed the criteria for denying and revoking secondary employment and that it added a mandatory annual disclosure to the secondary employment policy when it issued and implemented CCSO GO 11.4.55.1. The secondary employment policy as identified in CCSO GO 11.4.55.1 involves wages, hours, and terms and conditions of employment if it (1) involves a departure from previously established operating practices; or (2) effects a change in the conditions of employment; or (3) results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit. Chicago Park Dist. v. Ill. Labor Rel. Bd., 354 Ill. App. 3d at 602 (affirming the Local Panel's holding that a reduction of employees' work hours concerned wages, hours, and terms and conditions of employment); City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d at 208 (citing Westinghouse Electric Corp., 150 N.L.R.B. 1574 (1965)); City of Chicago, 31 PERI ¶ 3 (IL LRB-LP 2014). Establishing a threshold requirement is a matter of wages, hours and terms and conditions of employment. Vill. of Westchester, 16 PERI ¶ 2034 (holding the employer unilaterally changed employees' terms and conditions of employment by replacing its case-by-case, reasonable suspicion standard to evaluate employees' abuse of sick time with a six-day threshold after which the employer automatically reviewed the employees' absences). A policy effects employees' terms and conditions of employment when it subjects

employees to discipline. Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d 538, 551-552 (1st Dist 2004) (affirming the Board's finding that the County was required to bargain over a residency requirement because an employee could be disciplined and even discharged for failing to comply with the requirement); Ill. Sec'y of State, 24 PERI ¶ 22 (IL LRB-SP 2008) (rule requiring union stewards to sign in and out for union business effected the employees' terms and conditions of employment when it subjected employees to discipline for failing to properly track their union business); City of E. St. Louis, 3 PERI ¶ 2011 (IL SLRB 1987) (finding that a change in secondary employment policy was mandatory subject of bargaining where policy imposed disciplinary sanctions for failure to follow policy). However, merely codifying an already established policy does not affect an employee's terms and conditions of employment. City of Quincy, 6 PERI ¶ 2003 (IL SLRB 1989).

a. *criteria for denying and/or revoking secondary employment*

Creating new criteria for denying secondary employment and establishing objective threshold standards for revoking secondary employment authorization constitute significant impairments of reasonably anticipated work opportunities for the employees at issue, and involve departures from the previous operating practices. Section VII(H) of CCSO GO 11.4.55.1 specifically prohibits secondary employment "when an employee has incurred Unauthorized Absences or has been on Proof Status for attendance related issues" within a twelve month period. Section VII(L) prohibits secondary employment when an employee is on approved Leave of Absence, unless certain conditions are satisfied. The prohibitions identified in Sections VII(H) and (L) were not specifically identified as a prohibition in CCSO GO 07-2. Section VI((E) of CCSO GO 07-2 stated attendance was only a factor when considering whether to renew or revoke an employee's secondary employment authorization. The record demonstrates that the rationale behind considering attendance was because if the attendance issues were a caused by the employee's secondary employment the secondary employment was interfering with the employee's primary job with the County. Thus, establishing attendance as a basis for denying secondary employment constitutes a significant impairment or obtaining secondary employment which was a reasonably anticipated available opportunity under GO CCSO 07-2, and involves a departure from the previous operating practices.

In addition to the specifically prohibited circumstances identified in Section VII, Section X(A) of CCSO GO 11.4.55.1 identifies 13 different circumstances under which secondary

employment may be denied or revoked. These circumstances include when an employee has four or more instances of documented tardiness within a twelve month period, and when the employee has received discipline resulting in suspension of a total of three or more days for a single infraction within the twelve months prior to the request. Under CCSO GO 07-2, attendance was a factor for consideration in determining revocation of secondary employment, but there was no threshold as to what constituted poor attendance such that revocation of secondary employment was appropriate. Furthermore, the previously implemented secondary employment policy identified that while an employee's attendance and medical time were considerations in determining whether an employee would be authorized to engage in secondary employment, these considerations were completely subjectively applied according to the opinion of the deciding Chief Deputy Sheriff.

The fact that the policy identifies that secondary employment *may* be denied or revoked, rather than *shall* be denied or revoked still supports the conclusion that creating such threshold requirements involve the employees' terms and conditions of employment. In Village of Westchester, the Board held that when the employer implemented a policy that stated "a combination of sick days and disability days of more than six days *may* be considered excessive" constituted a threshold requirement that automatically triggered more intense scrutiny, and was a unilateral change to the terms and conditions of employment when the previous practice was to investigate an employee's alleged abuse of sick time based upon a subjectively reasonable suspicion as determined in each individual circumstance. Vill. of Westchester, 16 PERI ¶ 2034. As such, the specifically prohibited circumstances identified in Section VII, the identified bases for denial/revocation as stated in Section X(A) in CCSO GO 11.4.55.1 constitute significant impairment of reasonably anticipated work opportunities because they create new bases for denial and because they establish threshold standards for revocation, rather than the previously articulated subjective "considerations" for revocation.

b. *annual mandatory secondary employment disclosure*

The mandatory annual disclosure as identified in CCSO GO 11.4.55.1 involves a departure from the previous operating practices that were established in CCSO GO 07-2. The previously implemented secondary employment policy assumed that an employee was not working secondary employment, because on its face it required that all secondary employment be approved via a Secondary Employment Request Form. The record further demonstrates that

in application, an employee was only required to submit a Secondary Employment Request Form when the employee wanted to obtain secondary employment. Under the new policy, each employee is required to submit an annual Secondary Employment Disclosure Form regardless of the employee's secondary employment status. An employee is subject to discipline for failing to complete and submit the annual Secondary Employment Disclosure Form. CCSO GO 11.4.55.1 also effects a change in the conditions of employment because it subjects all employees to discipline for failing to complete the annual disclosure form.

In sum, the changes in the denial/revocation criteria and the mandatory annual secondary employment disclosure concern wages, hours, and terms and conditions of employment. Accordingly, the first prong of the Central City test is satisfied.

2. inherent managerial authority

The second prong of the Central City test is satisfied if the County can demonstrate that the changes to the secondary employment policy as identified in CCSO GO 11.4.55.1 are matters of inherent managerial authority. Section 4 of the Act states that matters of inherent managerial policy include "such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees." City of Chicago, 31 PERI ¶ 3 (IL LRB-SP 2014); Vill. of Ford Heights, 26 PERI ¶ 145. In order to constitute inherent managerial authority for the purposes of determining whether a policy is a mandatory bargaining subject, the employer must do one of the following: link the policy's objective with any of the enumerated managerial rights stated in section 4 of the Act, establish that the specific rule in question is necessary to protect the core purposes of the employer's business, or, establish that the rule is necessary to ensure the integrity of the government. See City of Chicago (Police Dep't), 26 PERI ¶ 115 (IL LRB-LP 2010) (citing Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 552); City of Springfield, 9 PERI ¶ 2024 (IL SLRB 1993). The burden is on the employer to satisfy the second prong of the Central City test. See Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 552; Town of Cicero v. Ill. Ass'n of Firefighters, IAFF Local 717 AFL-CIO, CLC, 338 Ill. App. 3d 364, 371 (1st Dist. 2003).

Pursuant to statute, the Sheriff and his agents' have custody and care of the courthouse and jail and are required to prevent crime and maintain the safety of the County's citizens. See

55 ILCS 5/3-6016; 55 ILCS 5/3-6017.[3] Illinois statute also provides that the Sheriff is liable for any subordinates' neglect or omission of duties. See 55 ILCS 5/3-6021.[4] The County argues that the issue of secondary employment is an inherent managerial matter because of "the strong connection between the Sheriff's statutory responsibilities of law enforcement and employee behavior." While the County makes no specific argument as to the purpose of its secondary employment policy, the General Orders themselves identify that the County's position is that because secondary employment affects the community, and the Sherriff's Office's "integrity and operational efficiency," the County must regulate its employees' ability to obtain secondary employment. There is no dispute that the County should strive for integrity and operational efficiency, but it provides no explanation for how the at-issue changes to the secondary employment policy help it achieve that end. See Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 552 (noting that the employer's failure to articulate an otherwise obvious viable argument prevented such argument from being considered); Town of Cicero v. Ill. Ass'n of Firefighters, IAFF Local 717 AFL-CIO, CLC, 338 Ill. App. 3d at 371.

The County argues that the Board should apply NLRB and other persuasive authority that have held that requirements regarding secondary employment are inherent managerial authority, and are not subject to bargaining. While, the cases the County cited do stand for that proposition, they are distinguishable to the facts in this case for two reasons; first, because the issue in this case is the changes to the existing secondary employment policy, not the establishment of a secondary employment policy; and second, because those employers linked their mission with their secondary employment policy, and here, the County fails to make such a link. See Peerless Pub., Inc., 283 NLRB 334 (1987) (the purpose of a secondary employment provision in a newly established ethics policy was to prevent a conflict of interest, was designed to enhance the credibility of employer's newspaper, and thus was not a mandatory bargaining subject because credibility lies at the core function of the employer's newspaper business);

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[3] 55 ILCS5/3-6016. Sheriff liable for acts of deputy and auxiliary deputy. The sheriff shall be liable for any neglect or omission of the duties of his or her office, when occasioned by a deputy or auxiliary deputy, in the same manner as for his or her own personal neglect or omission.

55 ILCS 5/3-6017. Sheriff custodian of courthouse and jail. He or she shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided.

[4] 55 ILCS 5/3-6021. Conservator of the peace. Each sheriff shall be conservator of the peace in his or her county, and shall prevent crime and maintain the safety and order of the citizens of that county; and may arrest offenders on view, and cause them to be brought before the proper court for trial or examination.

Commw. of Pa., 13 PPER ¶ 13097 (PA PPER 1982), *aff'd sub nom.* Council 13, AFSCME v. Commw. of Pa., Penn. LRB, 84 Pa. Commw. 458 (Penn. 1984) (adding a provision to an employee code of conduct that limited opportunities for outside employment when the employer determined that such services could be "incompatible or in conflict with the proper discharge of official duties" such that the outside employment may tend to impair independence, judgment or action in the performance of the governmental duties, and this was sufficiently linked to the state employer's duty to ensure governmental integrity). Without connecting the at-issue changes in its secondary employment policy to its inherent managerial authority as identified in the Act, or its core statutory safety and security responsibilities, the County has failed to establish that creating threshold requirements for secondary employment and establishing a mandatory secondary employment disclosure procedure fall within the County's inherent managerial authority. Consequently, the County has not satisfied the second prong of the Central City test. Since the secondary employment policy does not involve a matter of inherent managerial authority, the analysis ends here and there is no need to reach the third prong of the Central City test. City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill.2d at 206; Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 552; Vill. of Ford Heights, 26 PERI ¶ 145.

3. balancing the benefits of bargaining against the burden of bargaining

Assuming arguendo, that the County succeeded in its argument that the changes to its secondary employment policy satisfy the second prong of the Central City test, the third prong is to balance the benefits that bargaining over the changes to the policy will have on the decision making process against the burdens that bargaining imposes on the County's statutory safety and security responsibilities. The balance favors bargaining where the issues are amenable to resolution through the negotiating process. Chief Judge of the Cir. Ct. of Cook Cnty., 31 PERI ¶ 114 (IL LRB-SP 2014). Essentially, the Union must be capable of offering proposals that adequately address the County's stated concerns for changing the secondary employment policy. See Cnty. of St. Clair and the Sheriff of St. Clair Cnty., 28 PERI ¶18 (IL LRB-SP 2011). The Board has found that the balance favors the employer's unilateral authority when the employer's decision concerns policy matters that are intimately connected to its governmental mission or where bargaining would diminish its ability to effectively perform the services it is obligated to provide. Chief Judge of the Cir. Ct. of Cook Cnty., 31 PERI ¶ 114; City of Springfield, 9 PERI ¶ 2024 (citing Peerless Pub., Inc., 283 NLRB 334 (1987)). The employer's statutory mission and

the nature of the public service it provides are relevant considerations when applying the balancing step of the Central City analysis. Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1992). This balancing requires analyzing the specific facts at hand including the reasons for the at-issue topic, and the governmental policies underlying the topic. Id.

Here, the County's unilateral changes to the secondary employment policy are not intimately connected to its governmental mission such that it was not required to bargain over the changes. The County views secondary employment to affect the community and the Sherriff's Office's "integrity and operational efficiency," yet, without evidence to support this blanket assertion, this position is unpersuasive when balanced against the benefits that bargaining would have on the decision making process. Similarly, the County has not provided any evidence that bargaining over the proposed changes to the existing secondary employment policy would diminish its ability to effectively perform its statutory duties as custodian of the jail and keeper of the peace.

As I have found that creating new requirements for approving secondary employment, creating threshold requirements for revoking secondary employment, and requiring that all employees complete an annual Secondary Employment Disclosure Form each constitute changes to the status quo, it follows that such changes are also fundamental changes to the way the County conducts its business. In order for the County to prevail at this step, the implemented changes at issue must be necessary. See Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1992); AFSCME v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 268 (1st Dist. 1989) *aff'g* State of Ill. (Dep't of Cent. Mgmt. Serv. and Dep't of Corr.), 5 PERI ¶ 2001 (IL SLRB 1988). The Appellate Court affirmed the Board's holding that a drug testing policy of correctional employees was not a mandatory subject of bargaining. AFSCME v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d at 268. The Board and the Court concluded that the employer at a prison sufficiently demonstrated that drug testing was necessary in order to prevent drug smuggling into the prison, and that it had already implemented several other failed policies to prevent drug smuggling. Id. at 263. This conclusion was based upon the fact that despite the exhaustive preventative measures imposed by the employer, drug trafficking continued to be a problem among inmates, and on balance, the employer's duty to control the security issues that arise when drug trafficking occurred between inmates and employees outweighed the employees' privacy interests. Id at 268.

Here, the Union members have a significant interest in under what circumstances they are allowed to work in secondary employment during their time when they are not on duty with the County and the Union argues that bargaining could have resulted in a solution that satisfied both parties. In contrast, the County has not explained why bargaining over this issue of threshold requirements would be an impermissible burden upon its authority. Even assuming that the changes are within the County's inherent managerial authority, because the County has not identified the reasons why creating threshold standards for approval, denial or revocation of secondary employment are necessary to conserve the peace or to act as custodian of courthouse and jail, on balance the benefits to the decision making process that bargaining over creating such threshold requirements outweigh any burden bargaining would impose upon the County.

Regarding the need for the Secondary Employment Disclosure Form, the County has provided some evidence that it has been unable to accurately account for employee's requests for secondary employment. However, because the old policy specifically prohibits secondary employment without express approval, an employee still violates the County's secondary employment policy when he submits a request and begins secondary employment prior to being approved. Thus, the absence of the approval in the employee's file is sufficient to find that the employee violated the policy, and requiring annual disclosure does not cure the problem the County identifies as a reason for the new Secondary Employment Disclosure Form. Accordingly, I find that the benefits of bargaining over the employees' completing the annual disclosure also outweigh any burden bargaining would impose upon the County. Even assuming that the changes are sufficiently linked to Sheriff's statutory safety and security responsibilities, because the County has not identified the purpose of creating the threshold requirements and because imposing an annual disclosure does not cure the problem of the County knowing whether an employee is authorized to work secondary employment, on balance, the burden bargaining imposes on the County's ability to perform these responsibilities do not outweigh benefits that bargaining over these changes will have on the decision making process. Therefore, the new threshold requirements for approving and revoking secondary employment and the completion of annual Secondary Employment Disclosure Form as identified in CCSO GO 11.4.55.1 are mandatory subjects of bargaining.

B. Status Quo

In order for the at-issue changes to the secondary employment policy as identified in CCSO GO 11.4.55.1 to constitute a change to the status quo any changes the General Order makes to the previous policy must be material, substantial, and significant. Vill. of Westchester, 16 PERI ¶2034; City of Peoria, 11 PERI ¶2007; City of Quincy, 6 PERI ¶ 2003. An employer changes the status quo when it replaces its subjective evaluation of employees' conduct with threshold standards. Cnty. of Cook and Sheriff of Cook Cnty., 30 PERI ¶ 14 (citing Vill. of Westchester, 16 PERI ¶ 2034). Implementing or modifying a policy that creates new opportunity for discipline also constitutes a change in the status quo. See Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 551-552; Ill. Sec'y of State, 24 PERI ¶ 22; City of E. St. Louis, 3 PERI ¶ 2011. The Union alleges that the County changed the status quo when it added new denial/revocation conditions to the secondary employment policy and when it required that all employees at-issue complete the annual Secondary Employment Disclosure Form.

1. criteria for denying and/or revoking secondary employment

The Union alleges that the new criteria for denying and/or revoking secondary employment constitute a change in the status quo. The County argues that because absenteeism has always been a basis to deny secondary employment, the new General Order only clarifies the previous order, and clarifications do not constitute a change in the status quo. It is true, that merely codifying or reducing to writing policies already in place does not constitute a change in the status quo. See City of Quincy, 6 PERI ¶ 2003 (finding that an ordinance codifying the city's written residency requirement that was already being enforced upon City employees did not constitute a material change in the status quo). However, CCSO GO 07-2 stated that disciplinary history, attendance employment status changes, including injury on duty, duty accommodations/ restrictions, ordinary disability, medical leave, Family and Medical Leave of Absence act (FMLA), etc. are factors to be considered when reviewing a request for possible revocation or renewal. Unacceptable attendance and insufficient medical time was not to be considered as a factor when first authorizing the secondary employment request. Furthermore, what constituted unacceptable attendance and insufficient medical time was determined solely by the subjective opinion of the Sheriff's representative authorized to approve or deny a secondary employment request. Consequently, I find that the County's argument that this is merely a codification of the status quo is without merit. Accordingly, I find that County implemented a material change to its

secondary employment policy such that it altered the status quo of the policy when the approval, review, and revocation of secondary employment are based on newly established objective disciplinary history, attendance history, and status change requirements, when the previous policy regarding initial approval was not to consider such factors, and when the previous policy regarding the review and revocation of previously authorized secondary employment involved subjective considerations of such history.

2. annual mandatory annual secondary employment disclosure

The Union next alleges that requiring an employee to annually affirmatively identify his secondary employment status as opposed to simply requesting approval of secondary employment when seeking such employment constitutes a significant and substantial change in the status quo. The County concedes that the requirement that all employees annually disclose their secondary employment, but argues that requiring that each employee complete the Secondary Employment Disclosure Form is not a change to the hours, wages and terms and conditions of employment; essentially it argues that any change is de minimus. In support of this argument the County cites cases which all identify circumstances in which alleged changes are not sufficiently materially adverse in the context of employment discrimination. The issue is not whether the change is sufficiently adverse, rather the issue is whether the change sufficiently alters the status quo such that the County was required to bargain over the change prior to implementation. The Board and the Appellate Court have specifically rejected a de minimus argument when they have concluded that compliance with the policy is a condition of employment, because violating the policy subjects an employee to discipline, including discharge. See Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 551-552 (affirming the Board's holding that rejected the County's argument that any effect a residency requirement had upon employees already living within the County was insignificant because the employees were only required to continue living in the County). CCSO GO 11.4.55.1 establishes that if the County does not have a copy of the employee's Secondary Employment Disclosure Form, then that employee can be subject to discipline. As discussed above, a policy that subjects employees to possible discipline concerns the employees' terms and conditions of employment. See Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 551-552; City of E. St. Louis, 3 PERI ¶ 2011. Accordingly, subjecting every employee at issue to discipline for failing to complete an annual Secondary Employment Disclosure Form constitutes

a change in the status quo. Therefore, the County altered the status quo of its secondary employment policy in a material, substantial, and significant manner when it issued and implemented CCSO GO 11.4.55.1 because it established that the approval of secondary employment was to be based previously unconsidered attendance criteria; that the review and revocation of previously authorized secondary employment were to be based on newly established objective criteria; and because the General Order requires that all employees complete annual disclosure forms or be subject to discipline.

C. Notice and Opportunity to Bargain

The County's duty to bargain rises when the Union demands to bargain over the County's intended changes to a condition of employment involving a mandatory subject. See Chicago Transit Auth, 30 PERI ¶ 9 (IL LRB-SP 2013); Cnty. of Lake, 28 PERI ¶ 67; Vermilion Cnty., 3 PERI ¶ 2004 (IL SLRB 1986). A union's demand to bargain is timely if it is made prior to implementation of the change. Vill. of Schaumburg (Police Dep't), 29 PERI ¶75 (IL LRB-SP 2012); Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶ 3021 (IL LLRB 1996); City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992) (citing Owens-Corning Fiberglas Corp., 282 NLRB 609, 609 fn. 1 (1987)). Once the Union demands to bargain the County must bargain with the Union over the issue until parties reach impasse or agreement in negotiations. See Chicago Park Dist. v. Ill. Labor Rel. Bd., 354 Ill. App. 3d at 609 (affirming the Board's finding that an employer refused to bargain over reduction in hours when it informed the union that the employer's position was that the hours reduction did not concern a mandatory subject of bargaining); Cnty. of Woodford, 14 PERI ¶ 2015 (citing Vienna School Dist. No. 55 v. Ill. Ed. Labor Rel. Bd., 162 Ill. App. 3d 503, 515 (1987)).

The County argues that it has not breached its duty to bargain because it has never affirmatively refused to bargain over the CCSO GO 11.4.55.1, and because negotiations regarding secondary employment are ongoing. This argument neglects the fact that the issue here is whether the County was required to bargain prior to implementing CCSO GO 11.4.55.1, and since I have already determined that the County was required to bargain over the changes the General Order made to the County's secondary employment policy, whether it made an explicit denial is not dispositive of whether the County violated the Act. The Union is not limited to making a demand to bargain solely at the bargaining table. See Cnty of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011) (union's bargaining demand came via letter to the employer). Simply not

responding the Union's written request to bargain does not absolve the County from its duty because once the Union demanded to bargain the County had an affirmative to duty to negotiate over any proposed changes to the secondary employment policy. See Chicago Park Dist. v. Ill. Labor Rel. Bd., 354 Ill. App. 3d at 609 (rejecting the employer's argument that it never explicitly refused to negotiate because informing the union that it had no obligation to bargain constituted a refusal). Since the record is clear that the Union demanded to bargain over the contents of the new General Order, Respondents had a duty to bargain prior to implementation, and a failure to respond prior to implementation constitutes a refusal. Finally, the fact that the topic of secondary employment was discussed during the negotiations of the Unit 2 CBA, only demonstrates that the parties had not reached an impasse over the topic as identified in the CBA. The Union proposed to eliminate any language incorporating any General Order into the successor CBA, but the proposal did not in any way address the contents of the General Order referenced in the CBA, nor the contents of CCSO GO 11.4.55.1.

On July 12, 2013, the Union demanded to bargain over the County's proposed changes to its secondary employment policy. On August 1, 2013, the County implemented CCSO GO 11.4.55.1, containing such changes. At no point between the date the Union demanded to bargain and the date the County implemented CCSO GO 11.4.55.1 did the parties reach either an agreement or impasse regarding the changes contained in CCSO GO 11.4.55.1. Since the at-issue changes are mandatory bargaining subjects, the County breached its duty to bargain in good faith when it implemented CCSO GO 11.4.55.1. Therefore, by implementing the changes to the secondary employment policy without negotiating with the Charging Party to impasse, or agreement Respondents failed and refused to bargain in violation of Section 10(a)(4) and (1) of the Act.

V. CONCLUSIONS OF LAW

1. Respondents violated Section 10(a)(4) and (1) of the Act when, they unilaterally changed their secondary employment policy to require that the approval of secondary employment to be based upon previously unconsidered attendance and discipline criteria.
2. Respondents violated Section 10(a)(4) and (1) of the Act when, they unilaterally changed their secondary employment policy to require that the review and

revocation of previously authorized secondary employment were to be based on newly established objective attendance and disciplinary criteria.

3. Respondents violated Section 10(a)(4) and (1) of the Act when, they unilaterally changed their secondary employment policy to require that all employees complete annual Secondary Employment Disclosure Forms.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondents, County of Cook and Sheriff of Cook County, its officers and agents shall:

1. Cease and desist from:
   a. Refusing to bargain collectively in good faith with the Charging Party, International Brotherhood of Teamsters, Local 700,
   b. Enacting or implementing any changes in its secondary employment policy and procedure without negotiating with the Charging Party as required by the Act.
   c. In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act.
   d. Requiring that all employees in Units 1, 2, and 3, complete the Secondary Employment Disclosure Form.
2. Take the following affirmative action designed to effectuate the policies of the Act:
   a. Rescind the threshold standards to what prohibits and what constitutes cause for denial/revocation of secondary employment as identified in General Order 11.4.55.1.
   b. Rescind the Secondary Employment Disclosure Form as an enclosure to General Order 11.4.55.1.
   c. Rescind any reference to the Secondary Employment Disclosure Form in General Order 11.4.55.1 and any other General Orders issued by the Respondents.
   d. Reinstate and make whole any of the employees in Unit 1, Unit 2, or Unit 3, who were discharged, disciplined or otherwise adversely affected through application of the changes to the changes that CCSO GO 11.4.55.1 made to the secondary employment policy.
   e. Collectively bargain with the International Brotherhood of Teamsters, Local 700 as the exclusive representative of a bargaining unit of the Respondents' employees concerning the standard for determining what will be considered sufficient grounds for prohibition, denial and revocation of secondary employment with regards to absences, tardiness, proof status, discipline, and restrictions on secondary employment during leaves of absences.
   f. Post, for 60 consecutive days, at all places where notices to employees of the Respondents are regularly posted, copies of the attached notice. Respondents shall

take reasonable steps to insure that the notices are not altered, defaced, or covered by any other material.

g. Notify the Board, in writing, within 20 days of the date of this order, of the steps that the Respondents have taken to comply herewith.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven (7) days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, IL 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30 day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 9th day of March, 2015.

STATE OF ILLINOIS
ILLINIOIS LABOR RELATIONS BOARD
LOCAL PANEL

Deena Sanceda
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

L-CA-14-016
Addendum

The Illinois Labor Relations Board, Local Panel is charged with protecting rights established under the Illinois Public Labor Relations Act, 5 ILCS 315 (2012). The Board has found that the County of Cook and Sheriff of Cook County have violated Section 10(a)(4) and(1) of the Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

The Act also states that a public employer cannot interfere with, restrain or coerce its employees in the exercise of these rights. The Act further imposes upon a public employer and the exclusive representative of a bargaining unit the duty to bargain collectively.

Accordingly, we assure you that:

WE WILL cease and desist from:

1. Refusing to bargain collectively in good faith with the Charging Party, International Brotherhood of Teamsters, Local 700.

2. Enacting or implementing any changes in its secondary employment policy and procedure without negotiating with the Charging Party as required by the Act.

3. Requiring that all employees in Units 1, 2, and 3, complete the Secondary Employment Disclosure Form.

WE WILL, rescind the threshold standards to what prohibits and what constitutes cause for denial/revocation of secondary employment as identified in General Order 11.4.55.1.

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE

AND MUST NOT BE DEFACED.

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

WE WILL, rescind the Secondary Employment Disclosure Form as an enclosure to General Order 11.4.55.1.

WE WILL, rescind any reference to the Secondary Employment Disclosure Form in General Order 11.4.55.1.

WE WILL, collectively bargain with the International Brotherhood of Teamsters, Local 700 as the exclusive representative of a bargaining unit of the Respondents' employees concerning the standard for determining what will be considered sufficient grounds for prohibition, denial and revocation of secondary employment with regards to absences, tardiness, proof status, discipline, and restrictions on secondary employment during leaves of absences.

WE WILL, reinstate and make whole any of those employees in Unit 1, Unit 2, or Unit 3, who were discharged, disciplined or otherwise adversely affected through application of the changes to the changes that CCSO GO 11.4.55.1 made to the secondary employment policy.

DATE _____

_____
County of Cook and Sheriff of Cook County

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
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